

NOTE: Appearing first is the Full Board summary which is the last meeting of the day. The committees will follow in the order of which time they were conducted. The Dealer Board staff felt it would benefit our readers to have the last meeting of the day appear first on the website.

~ FINAL DRAFT ~

**Meeting Summary
Motor Vehicle Dealer Board
Monday, November 9, 2009**

Chairman D.B. Smit called the Dealer Board meeting to order at 10:20 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 16 Board members present. Present were members Lynn Hooper, T. K. Hughes, Henry Jones, David Lacy, Wanda Lewark, Chip Lindsay, Thomas Moorehead, Pat Patrick, Matt Queen, Larry Shelor, Joe Tate, Jimmy Whitten, Sally Woodson, Robert Woodall and Tommy Woodson. (Absent: Todd Haymore, Frank Pohanka, Kevin Reilly). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely, Diane Handy and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

PUBLIC COMMENT

There was no public comment.

The September 14, 2009 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Vice-Chairman Tommy Woodson summarized discussions held and actions that were taken during the Committee Meeting.

- **Reconsideration: Karen D. Munns and Valley View Motors.** Vice-Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding Karen D. Munns and Valley View Motors. Based on that discussion, Mr. Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Karen D. Munns t/a Valley View Motors for alleged violations of VA Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply). Ms Munns requested that the Board reconsider the decision they made at the September Board meeting to require her to successfully complete the dealer-operator course. Based on due reconsideration, the Board believes a civil penalty should be assessed against Karen D. Munns t/a Valley View Motors. The Board hereby assesses a \$50 civil penalty against Karen D. Munns t/a Valley View Motors

T.K. Hughes seconded. All in favor: 12 (Smit, Lewark, Hughes, Lacy, Lindsay, Moorehead, Patrick, Shelor, Tate, Woodall, S. Woodson, T. Woodson). Opposed: 4 (Hooper, Whitten, Jones, Queen). The motion carried.

- **Enaytullah Babe and Titan Motors, Inc.** Vice-Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding Enaytullah Babe and Titan Motors, Inc. Based on that discussion, Mr. Woodson made the following motion: The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Enaytullah Babe t/a Titan Motors, Inc. for alleged violations of VA Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (supplemental sales location), 46.2-1529 (failure to maintain all dealer required records), 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) failure to comply with a written warning and (18) (failure to maintain liability insurance). Based on due consideration, the Board believes a civil penalty should be assessed against Enaytullah Babe t/a Titan Motors, Inc. The Board hereby assesses a \$2,000 civil penalty against Enaytullah Babe t/a Titan Motors, Inc

Sally Woodson seconded. The motion carried unanimously.

Licensing Committee

Chairman Chip Lindsay summarized discussions held and actions that were taken during the Committee Meeting.

- **Update: Continuing Education Regulations.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Continuing Education Regulations.
- **Anthony M. Tedesco, Salesperson.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Anthony M. Tedesco. Based on that discussion, Mr. Lindsay made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the executive director, under the authority granted by the Motor Vehicle Dealer Board, revoked and denied the transfer of Mr. Anthony M. Tedesco salesperson's license. Mr. Tedesco appealed the executive director's decision and requested a formal hearing. The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Mr. Anthony M. Tedesco and based on due consideration, the Board believes Mr. Tedesco should not be licensed as a salesperson. The Board hereby revokes and denies the transfer of Mr. Anthony M. Tedesco's salespersons license and based on due consideration, the Board believes a civil penalty should be assessed against Mr. Anthony M. Tedesco. The Board hereby assesses a \$750 civil penalty against Mr. Anthony M. Tedesco

Henry Jones seconded. The motion carried unanimously.

Advertising Committee

Chairman Lynn Hooper summarized discussions that were held during the Committee Meeting.

- **Advertised Price.** Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Advertised Prices. (See Advertising Committee Summary for details/conclusion)

Transaction Recovery Fund Committee:

Chairman Larry Shelor summarized discussions held and actions that were taken during the Committee Meeting.

- **Kimberly L. (Wildey) Younger and Auto Source.** Chairman Larry Shelor summarized for the Board the discussion held in the Committee meeting regarding Kimberly L. (Wildey) Younger. Based on that discussion and the recommendations in these cases, Mr. Shelor made the following motion: Pursuant to § 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund (“Fund”), the Board has reviewed and considered a claim submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claims should be payable from the Fund. The Board hereby approves and reaffirms the following claims and payment amount subject to compliance by the claimant with statutory requirements:

Kimberly L. (Wildey) Younger and Auto Source	\$1,448.96
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Thomas Moorehead seconded. The motion carried unanimously.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

Motion was made by Lynn Hooper to move the Board meeting time from 8:30 a.m. to 9:00 a.m. He indicated that the meetings are ending sooner that later. Sally Woodson seconded. The motion carried unanimously.

The next meeting will be scheduled for January 11, 2010.

- **Executive Director’s Report.** Bruce Gould introduced Lucy Hutchinson, from Governor Kane’s Secretary of Commonwealth Office, is the one who help get the Board members appointed.
- **Print on Demand.** Mr. William Childress, of DMV’s Titling and Registration Office, indicated that Print on Demand will go on-line the week before Thanksgiving.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Smit adjourned the meeting at 10:50 a.m.

Meeting Summary
Dealer Practices Committee
Monday, November 9, 2009

Vice-Chairman Tommy Woodson called the Dealer Practices Committee meeting to order at 8:31 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members T.K. Hughes, David Lacy, Wanda Lewark, Chip Lindsay, Thomas Moorehead, Matt Queen, Larry Shelor, Robert Woodall and Sally Woodson. (Absent: Kevin Reilly). Other Board members present: Joe Tate, Henry Jones, Pat Patrick, D.B. Smit, Jimmy Whitten. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely, Diane Handy and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The September 14, 2009 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: September Actions. Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on September 14, 2009.

- **Reconsideration: Karen D. Munns and Valley View Motors.** Ms. Munns came before the Committee and asked the members to reconsider her case from the September Board meeting. At the September Board meeting, the Board voted that she must complete the Dealer-Operator class. Ms. Munns stated that she did not need the class as the problem she was having was not maintain laws. In addition, as a small business, she cannot find the time to attend the Dealer-Operator course. After much debate to reconsider its prior decision of requiring Ms. Munns to attend the course, the following motion was made:

Motion was made by T.K. Hughes to assess a \$50 civil penalty. David Lacy seconded. All in favor: 9 (Hughes, Lacy, Lewark, Lindsay, Moorehead, Shelor, Woodall, S. Woodson, T. Woodson). Opposed: 1 (Queen). The motion carried.

This motion replaces the decision previously made at the September 14, 2009 Board meeting.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Formal Hearing:

Mr. Babe was present and spoke on his own behalf.

- **Enaytullah Babe and Titan Motors, Inc.** Historical overview leading up to the formal hearing: On June 1, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (Supplemental sales location), 46.2-1528 (Improper conduct of business), 46.2-1529 (Failure to maintain all dealer required records), 46.2-1550 (permit the illegal use of dealer's plates) and 46.2-1575(2) (failure to comply with a written warning/willful failure to comply) and (18) (failure to maintain liability insurance). At the July 13, 2009 Dealer Board Committee and Full Board Meeting, the Committee adopted a resolution to assess a civil penalty of \$1,000 for violations of the above said Code Sections. Also, the Board suspended all licenses and certificates issued by the Board to Mr. Enaytullah Babe until what time Mr. Babe has a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. On August 3, 2009, Mr. Babe appealed and requested a formal hearing. On September 25, 2009, a formal hearing was conducted to address the above alleged violation(s). Based on the information provided at the hearing, the hearing officer recommended that the Board consider Mr. Babe in violation of the aforementioned Code Sections. Further, Mr. Babe should pay a \$2,000.00 civil penalty.

Motion was made by Larry Shelor to accept the hearing officer's recommendation. David Lacy seconded. All in favor: 9 (Hughes, Lewark, Lindsay, Morehead, Queen, Shelor, Woodall, S. Woodson and T. Woodson). Opposed: 1 (Lacy). The motion carried.

NEW BUSINESS FROM THE FLOOR

- **Cell Phone Area Codes.** A MVDB field representative approached the executive director and asked whether or not the area code on a cell phone used as the telephone for a dealership should only be a Virginia area code. After much discussion, it was determined that there is nothing in the law requiring a Virginia area code as a requirement for a dealer's business number.

The next meeting was scheduled for January 11, 2010.

The meeting adjourned at 9:33 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, November 9, 2009

Chairman Chip Lindsay called the Dealer Licensing Committee meeting to order at 9:33 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Lynn Hooper, T.K. Hughes, Henry Jones, Pat Patrick, Joe Tate, Jimmy Whitten and Robert Woodall. (Absent: Frank Pohanka). Other Board members present: Sally Woodson, Thomas Moorehead, David Lacy, Larry Shelor, D.B. Smit, Wanda Lewark, Matt Queen, Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely, Diane Handy and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The September 14, 2009 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: September Actions.** Peggy Bailey reported on the actions taken at the Licensing Committee meeting on September 14, 2009.
- **Update: Dealer-Operator Continuing Education.** Bruce Gould indicated that the Governor's Policy office has not yet released the proposed regulations for the next step which is the 60 day public comment period. Once the public comment period is over, it will then go to the next administration.

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

Review and Action: Formal Hearing:

- **Anthony M. Tedesco, Salesperson.** Historical overview leading up to the formal hearing: On February 18, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575 (1) having made a material misstatement or omission in an application for a license; (4) defrauding any other person in the conduct of the licensee's business; (6) having used deceptive acts or practices; and (8) having been convicted any fraudulent act in connection with the business of selling vehicles. The hearing officer recommended assessing a civil penalty of \$500.00. The Executive Director agreed with the hearing officer's findings and assessed a civil penalty of \$500 and revoked Mr. Tedesco's license. On June 2, 2009, Mr. Tedesco

appealed and requested a formal hearing. On October 17, 2009, a formal hearing was conducted to address the above alleged violations. Based on the information provided at the hearing, the hearing officer recommended assessing a civil penalty of \$750.00.

Motion was made by Joe Tate to accept the hearing officer's recommendation, as well as denying Mr. Tedesco's transfer of license. Lynn Hooper seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 11, 2010.

The meeting adjourned at 9:46 a.m.

Meeting Summary
Advertising Committee
Monday, November 9, 2009

Chairman Lynn Hooper called the Advertising Committee meeting to order at 9:47 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Matt Queen, Larry Shelor, Joe Tate, Sally Woodson, Jimmy Whitten and Tommy Woodson (Absent: Kevin Reilly, Todd Haymore, Frank Pohanka). Other Board members present: Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely, Diane Handy and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The September 14, 2009 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Advertised Price.** Bruce Gould indicated that a core understanding of the MVDB staff in reviewing advertisement is that the advertised price of a motor vehicle is the price a consumer would pay excluding tax, title and registration fees; processing fee and freight (when applicable).

An advertisement may not employ a disclaimer to reveal special conditions or criteria necessary in order to purchase the vehicle at the advertised price. The examples in the meeting notebook are ones where the dealers have advertised a price and either by a disclaimer at the bottom of the page or near the advertised price in much smaller print, state that the customer must have a specific amount of cash down or trade in order to purchase the vehicle at the stated price.

MVDB staff concluded long ago that this type of advertising was misleading and was in violation of the law and regulation that a disclaimer may not be used to contradict the advertisement. Keeping with the core understanding of what the advertised price means, these types of advertisements appeared to be contrary to law, regulation and the Board's past decisions as the customer must pay more than the advertised price.

Staff viewed these advertisements as misleading because the consumer can not purchase the vehicle at the advertised price. In each case a down payment or trade-in was required. In the past, when staff called the dealer or sent an educational letter, the dealer discontinued this type of advertisement.

A more recent educational effort with a dealer resulted in the dealer disagreeing with the staff's conclusion that the advertisement was misleading. Staff recognizes that "misleading" is a subjective attribute and since the dealer felt strongly that the advertisement was not misleading and that the disclaimer did not contradict the advertised price, it was concluded that the Advertising Committee and Board should review and provide guidance to staff.

Consensus of the Committee is that the dealer must advertise the actual price of the vehicle without a disclaimer that would require a down payment or trade-in that would increase the price of the vehicle.

The next meeting was scheduled for January 11, 2010.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 10:02 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, November 9, 2009

Chairman Larry Shelor called the Transaction Recovery Fund Committee meeting to order at 10:03 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Henry Jones, David Lacy, Wanda Lewark, Pat Patrick, Matt Queen and Joe Tate. (Absent: Todd Haymore, Frank Pohanka). Other Board members present: Sally Woodson, Thomas Moorehead, T.K. Hughes, D.B. Smit, Chip Lindsay, Lynn Hooper, Jimmy Whitten, Robert Woodall, Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely, Diane Handy and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The September 14, 2009 summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

- **Kimberly L. (Wildey) Younger and Auto Source Used Cars.** On June 4, 2008, Kimberly L. (Wildey) Younger entered into a contract to purchase a 2000 Ford Excursion from Auto Source for a purchase price of \$20,907.97. In connection with the purchase price, Mrs. Younger made a down payment of \$1,000.00 and the dealership obtained financing through Wachovia Dealer Services for the remaining balance of \$19,907.97.

Just before closing, Craig Wyne, owner of Auto Source indicated that he had concerns about the truck's swing arm and front end and suggested that she have it checked out and that whatever was needed, he would take care of it. Per the recommendations of Mr. Wyne, on June 5, 2008, Mrs. Younger took the truck to Holland Road Auto Service where it "passed" inspection. Then on June 6, she took the truck to Bert's Alignment to follow-up on the owner's concerns regarding the front end. The mechanic discovered major safety issues with front end. He indicated that the truck should never have passed inspection.

Because Mrs. Younger was still within her 30-day or 1,000 mile warranty, she returned to Auto Source, with the repair invoice and requested that the repairs be made to the truck. Mr. Wyne indicated that he felt that Bert's Alignment was just "adding in things to get money" and that he was not going to repair the items. After further discussion, he indicated he would have his mechanic do the repairs; however, she'd have to pay \$500.00 alleging she owned the fees for title, tax and tags. But it was clear on her Buyer's Order that the title, tax and license fees were included in the financing.

On July 3, 2008, Mrs. Younger's father called the dealership and indicated that his daughter should have never purchased the vehicle because her income did not reflect the ability to pay for the loan. The dealership would not take the truck back, but agreed to put the truck back on the lot and help resell it. In order to get the truck back to the lot, they had to have the truck jumped. They purchased two batteries for the truck in order for it run. Mrs. Younger never agreed to pay for the batteries, nor was she aware they purchased the batteries until she attempted to retrieve the truck. During the time the dealer had the truck on their lot, they made no attempt to fix the warranty items still in need of repair. Their intent was to sell the truck without having to make the repairs. The dealership refused to give her the keys until she paid for the batteries. The police were called and they indicated that because the title was held by Wachovia they could not technically make him give her the keys because she didn't own the truck. She paid for the batteries; however, the truck had to be jumped again indicating there were other issues with the truck that she was not made aware of.

On June 24, 2008, Mrs. Younger filed a Warrant in Debt against Auto Source Used Cars and the owner Craig Wyne in the Virginia Beach District Court. On July 14, 2008, Mrs. Younger contacted DMV to inquire on the status of her plates and registration. When she attempted to register the vehicle herself, DMV indicated that the vehicle was still registered in the previous owner's name and that the dealership was therefore in violation for not registering the vehicle within the 30 day time frame. They recommended that she contact the Motor Vehicle Dealer Board to file a formal complaint against Auto Source. Via fax, Mrs. Younger filed a complaint against Auto Source with the Motor Vehicle Dealer Board.

On July 28, 2008, the consumer complaints analyst responded to Mrs. Younger's complaint. It appeared that Auto Source was in violation of the licensing laws for failure to register the vehicle within the required days by statute. Mrs. Younger's complaint was then forwarded to Law Enforcement Services with the DMV. On August 7, 2008, the Virginia Beach General District Court awarded Mrs. Younger judgment against Auto Source in the amount of \$5,000, plus \$48.00 in costs. But, Mrs. Younger was unsuccessful in receiving payment from Auto Source because they had filed bankruptcy (Chapter 7) and there would be a meeting of creditors. During the meeting of the creditors, it was determined that Auto Source had no assets and therefore it was indicated to Mrs. Younger that she may want to contact the Motor Vehicle Dealer Board Transaction Recovery Fund for consideration of payment on her judgment.

On July 7, 2009, Mrs. Younger submitted documentation to the Dealer Board for consideration of payment. In reviewing Mrs. Younger's claim, it appears that the dealership was in violation of the licensing laws as well as other misrepresentations. Currently Mrs. Younger has possession of the truck and the DMV records reflect that the truck was titled and registered in her name on July 16, 2008. It would appear that the only amount of the judgment that is compensable for payment from the Fund is the repair fees that were not honored by the expressed warranty by the dealer and court costs.

After carefully reviewing all the documentation, staff requested that the Recovery Fund Committee and Full Board approve Mrs. Younger's claim of \$1,448.96. This amount is based on the repairs in the amount of \$1,400.96 and court costs in the amount of \$48.00. On September 8, 2009, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended to support the findings of staff and approve payment of \$1,448.96.

Motion was made Pat Patrick to accept the staff and hearing officer's recommendation. Joe Tate seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for January 11, 2010

The meeting adjourned at 10:13 a.m.